

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRISTOPHER E. LINGENFELTER
Claimant

VS.

MARTIN K. EBY CONSTRUCTION
Respondent

AND

ST. PAUL FIRE & MARINE INS. CO.
Insurance Carrier

Docket No. 1,005,416

ORDER

Claimant requested review of the December 22, 2003 Award by Administrative Law Judge (ALJ) John D. Clark. The Board heard oral argument on August 17, 2004.

APPEARANCES

Christopher E. Lingenfelter (claimant), of Allen, Kansas appeared pro se. Vince A. Burnett, of Wichita, Kansas appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ concluded the claimant had sufficiently proven a claim for functional impairment only and awarded claimant 7 percent permanent impairment to the whole body. The ALJ found that claimant had been released to return to and for a time did work without

any restrictions following his injury. There was no evidence that his post-injury work load had decreased in any manner. Thus, claimant was not entitled to work disability benefits.

The claimant, acting as his own legal representative on appeal requests review of this finding, alleging a number of different bases for appeal. As will be more fully explained below, many of these allegations are not within the Board's jurisdiction to consider and address. However, there is one allegation which the Board does have the power to decide, namely claimant's contention that he has sustained a higher functional impairment as well as work disability as a result of his industrial accident.

Respondent argues the claimant failed to sufficiently prove his entitlement to work disability benefits under Kansas law. Respondent maintains the evidence shows that claimant returned to work at his regular duties and was the subject of an economic layoff. Given this argument, respondent maintains claimant's recovery is limited to his functional impairment. Thus, the ALJ's Award should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds the ALJ's Award should be affirmed.

There is no dispute between the parties as to the underlying facts supporting the claimant's claim. Claimant was injured on July 10, 2002, while he was working as a carpenter for respondent at a construction site. During a storm, high winds picked up a table and it struck claimant in his head and back causing injuries to his neck and a concussion. Claimant may have lost consciousness for a short period of time, although this is not entirely clear from the records contained within the file.

He was immediately given conservative treatment, but his complaints of pain in the neck, hands, elbows and shoulders, along with a sense of weakness in the legs continued. Claimant was referred to Dr. Steven L. Hendler for an evaluation and treatment. Dr. Hendler began treating claimant on September 30, 2002, and initially diagnosed post concussive syndrome and cervical strain.¹ Dr. Hendler continued to see claimant and recommended medications, physical therapy and initially imposed restrictions on his work, which respondent was able to accommodate. Over time, the restrictions were liberalized, and on December 23, 2002, he released claimant to full duty without any restrictions.²

¹ Hendler Depo. at 7.

² *Id.* at 10, Ex. 2 at 5-7 (December 23, 2002 report).

Thereafter, claimant returned to work for respondent working his normal job duties as a laborer at his pre-injury wage until January 17, 2003. Claimant concedes he was laid off with several other employees, but maintains he was terminated because he filed a workers compensation claim and that others were rehired sometime thereafter. He also contends that he was laid off because he had asked for but was denied a raise when he returned to full duty. Other than this allegation within his brief, claimant has identified no other evidence to substantiate this claim.

Following claimant's release, Dr. Hendler provided a written report as to claimant's permanency. On February 19, 2003, Dr. Hendler rated claimant with a 5 percent impairment to the whole body based on the A.M.A. *Guides* for the cervical strain.³ He noted claimant has no findings of permanent impairment due to the concussion. Dr. Hendler made no further recommendations for treatment and imposed no work restrictions. On June 18, 2003, Dr. Hendler reexamined claimant and reaffirmed his opinions and findings. He also testified claimant has no task loss as a result of his work-related injury.⁴

In September 2002, claimant was evaluated by Dr. Lyle E. Baade, a clinical neuropsychologist. The extent of his testing is detailed in his deposition and will not be unnecessarily repeated herein. Suffice it to say, he appears to have made every attempt to be thorough given claimant's complaints.

Dr. Baade concluded claimant had sustained a closed head injury and identified very mild cognitive deficits primarily in the form of attentional deficits. He also concluded that from an emotional and personality point of view, the testing indicated claimant was the kind of person inclined to focus on and complain of injuries more than the average person.⁵ Dr. Baade assigned a 2 percent impairment of function solely for the mild neurocognitive deficits and further opined claimant sustained no task loss as a result of his accidental injury.⁶

Claimant was also evaluated by Dr. Peter V. Bieri who also diagnosed post concussive syndrome and cervical strain. Dr. Bieri rated the claimant with a 5 percent permanent impairment to the whole body attributable to the cervical-thoracic spine region and another 10 percent of the whole body for cognitive deficit secondary to the head injury

³ *Id.* at 9-11, Ex. 2 at 3 (February 19, 2003 report).

⁴ *Id.* at 15-16.

⁵ Baade Depo. at 13-14.

⁶ *Id.* at 15.

post-concussive syndrome. Dr. Bieri opined, based upon the vocational analysis provided by Doug Lindahl, that claimant sustained a 46 percent task loss.⁷

Following submission, the ALJ issued an Award granting claimant a 7 percent functional impairment to the body as a whole. In doing so, the ALJ adopted the opinions of Dr. Hendler, who assigned a 5 percent functional impairment for the cervical-thoracic impairment, as he was the treating physician, as well as Dr. Baade, the neuropsychologist, who assigned a 2 percent functional impairment for the neuropsychological disorder. The ALJ indicated Dr. Baade's testing and his experience dealing with neuropsychological disorders was more persuasive than the opinions expressed by Dr. Bieri, who conducted no neuropsychological testing in the course of his examination. Thus, he awarded claimant an additional 2 percent to the body as a whole for the claimant's cognitive deficits.

The Board has reviewed the evidence bearing on the issue of functional impairment and finds no reason to disturb the ALJ's finding in that respect.

One of the reasons the ALJ denied claimant's work disability claim was because claimant was released by the treating physician in December of 2002, with no work-related restrictions. The Board affirms this finding. Claimant was able to return to work performing heavy manual labor as a carpenter. This lends support to Dr. Hendler's conclusion that claimant was not in need of permanent restrictions. In the absence of work restrictions there is no work disability.

The Board must briefly address the claimant's written contention that his lawyer is to blame for his failure to submit sufficient evidence to support his claim for benefits.⁸ Among other references, claimant points to the fact that Ms. Johnston did not know the county in which he was injured as evidence that he was not appropriately represented and that insufficiency is responsible for his evidentiary failures. The Board is powerless to address this allegation. Our purpose is to evaluate the facts and apply the law to those facts. The Board has no authority to grant benefits when there is an allegation of deficiency of counsel.

Similarly, claimant's complaint that adequate medical treatment was not provided nor was vocational rehabilitation made available to him are issues that are outside this Board's purview. As of 1993, vocational rehabilitation benefits were no longer available to injured employees at respondent's expense absent respondent's approval. Claimant's complaints as to the need for medical treatment are more appropriately considered at a preliminary hearing. Claimant was represented by counsel as of August 1, 2002, shortly

⁷ Mr. Lindahl identified 64 tasks and according to Dr. Bieri, claimant has lost the ability to perform 30 of these tasks.

⁸ Appellant's Submission Brief (filed February 4, 2004).

after his injury. Had there been a need for a different course of treatment, there is a procedure within the Act to address such a need.⁹ Generally, a case is submitted for a final award of permanent partial disability compensation only after claimant has reached maximum medical improvement and his condition is deemed permanent.

Finally, claimant's attorney, who has since withdrawn from this case, has filed a lien in this matter. The Workers Compensation Act provides that all disputes regarding attorneys fees shall be decided by the ALJ pursuant to K.S.A. 44-536(h). Accordingly, any payment of this Award shall reflect Ms. Johnston's lien and to the extent there is a dispute, that issue shall be addressed by the ALJ.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated December 22, 2003, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of September 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Christopher E. Lingenfelter, pro se Claimant
Vince Burnett, Attorney for Respondent and its Insurance Carrier
Shayla Johnston, Attorney at Law
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁹ K.S.A. 44-534a (Furse 2000).